



04 SEP 2002

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OBLON SPIVAK MCCLELLAND
MAIER & NEUSTADT PC
FOURTH FLOOR
1755 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202

#7

In re Application of
HOREA BACILA, ET AL.
Application No.: 09/926,751
PCT No.: PCT/RO00/00008
Int. Filing Date: 13 April 2000
Priority Date: NA
Attorney's Docket No. 215530US2PCT
For: APPARATUS AND A METHOD FOR
SUPPLYING INFORMATION

:
: DECISION ON
:
: PETITION
:
: UNDER 37 CFR 1.47(a)
:
:
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This is in response to the "PETITION UNDER 37 CFR §1.47(a)" filed on 01 April 2002.
Petitioner has submitted the requisite \$130 petition fee by check.

BACKGROUND

On 13 April 2002, applicants filed international application PCT/RO00/00008, no priority was claimed. A DEMAND was filed on 08 November 2001 prior to the expiration of 19 months from the priority date electing the United States. Accordingly, the thirty (30) month time period for paying the basic national fee in the United States of America expires at midnight on 13 October 2002.

On 12 December 2001, applicants filed a Transmittal Letter for entry into the national stage in the United States of America. Filed with the Transmittal Letter was, inter alia, the requisite basic national fee. No executed oath or declaration from the inventors accompanied the Transmittal Letter.

On 01 February 2002, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a), and (b), identifying the application by International application number and international filing date" must be submitted within two months from its 01 February 2002 date of mailing or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 01 April 2002, applicant filed the present petition accompanied, inter alia, by a declaration from Mr. Neil Riches.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

"Where inability to find or reach a nonsigning inventor 'after diligent effort' is the reason for filing under 37 CFR 1.47, an affidavit or declaration of the facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter instructions, telegrams, etc. that support a finding that the nonsigning inventor could not be found or reached should be made a part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

The averments of Neil Riches are insufficient to support a finding that the nonsigning inventors, Mr. Mirela Boboc, Mr. Ovidiu Ban, and Mr. Mihai Spatar could not be found after diligent effort because Mr. Richard's declaration fails to show diligent effort to locate inventors Boboc, Ban and Spatar. Petitioner has provided no proof to collaborate that a complete application (specification, including claims, drawings, and oath or declaration) was sent to them at their last known addresses. The declaration only states that registered letters were sent once to each of the three individual inventors at their last known addresses, respectively. Although, petitioner has submitted copies of the mail return receipt that indicates that the letters were not able to be delivered it is unclear if they were not able to be delivered because the inventors were away during such time since the record only shows one attempt.

In addition, Mr. Riches has not shown that he has searched for the above non-signing inventors new address either by the internet or by telephone directory, which would show diligent effort by Mr. Riches to find inventors Boboc, Ban, and Spatar.

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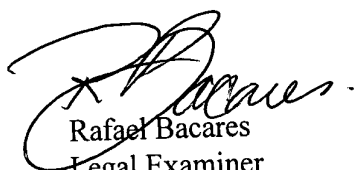
Consequently, at this time it can not be concluded that the nonsigning inventors Boboc, Ban, and Spatar could not be found after diligent effort

DECISION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.47(a) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)."

Any further correspondence with respect to this matter should be addressed to the Commissioner for Patents, Office of PCT Legal Administration, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



Rafael Bacares
Legal Examiner
PCT Legal Office
Telephone: (703) 308-6312
Facsimile: (703) 308-6459



Leonard Smith
Legal Examiner
PCT Legal Office